

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS
BOARD REGION 29**

**EMPIRE STATE BUS CORP., EMPIRE
CHARTER SERVICE, INC., and ALLIED
TRANSIT CORP.,**

A Single Employer,

and

Case 29-RC-256934

LOCAL 854,

Petitioner,

and

**LOCAL 553, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,**

Intervenor.

DECISION AND DIRECTION OF ELECTION

On February 26, 2020, the Petitioner filed a representation petition under Section 9(c) of the National Labor Relations Act (the Act) seeking to represent a unit of all full-time and regular part-time drivers and attendants employed by the below-described Employer at its facilities at (i) 141 Hinsdale Street, Brooklyn, New York, (ii) 148 Snediker Avenue, Brooklyn, New York, and (iii) 12505 Essex Street, Brooklyn, New York, excluding managers, professional employees, dispatchers, yard persons, fuelers, shop employees, guards and supervisors as defined in the Act. The parties stipulated that the unit sought by Petitioner is appropriate for collective bargaining.

The sole issue presented at the hearing is whether the Petitioner is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act, as amended (“the Act”). For the reasons that follow, I find that Petitioner is a labor organization within the meaning of the statute.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its authority in this proceeding to the Regional Director of Region 29. A hearing was held before John Mickley, a hearing officer of the Board, on March 9, 2020. Upon the entire record in this proceeding, I find:

1. The Hearing Officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that:

- A. At all material times, Empire State Bus Corp. has been a domestic corporation with its principal office located at 141 Hinsdale Street, Brooklyn, New York and places of business located at 141 Hinsdale Street, Brooklyn, New York; 148 Snediker Avenue, Brooklyn, New York; and 12505 Essex Street, Brooklyn, New York and has provided transportation services for the City of New York, including students, and other various customers.
- B. At all material times, Empire Charter Service, Inc. has been a domestic corporation with its principal office located at 141 Hinsdale Street, Brooklyn, New York, and places of business located at 141 Hinsdale Street, Brooklyn, New York; 148 Snediker Avenue, Brooklyn, New York; and 12505 Essex Street, Brooklyn, New York, and has provided transportation services for the City of New York, including students, and other various customers.
- C. At all material times, Allied Transit Corp. has been a domestic corporation with its principal office located at 141 Hinsdale Street, Brooklyn, New York; Brooklyn, New York and places of business located at 141 Hinsdale Street, Brooklyn, New York; 148 Snediker Avenue, Brooklyn, New York; and 12505 Essex Street, Brooklyn, New York, and has provided transportation services for the City of New York, including students, and other various customers.
- D. At all material times, Empire State Bus Corp., Empire Charter Service, Inc. and Allied Transit Corp. have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common insurance, purchasing and sales; and have held themselves out to the public as a single-integrated business enterprise.
- E. Based on its operations described above in paragraphs A–D, Empire State Bus Corp., Empire Charter Service, Inc. and Allied Transit Corp. constitute a single-integrated business enterprise and a single employer (“Employer”) within the meaning of Section 2(6) and (7) of the Act.
- F. Annually, the Employer, in its course and conduct of business operations, performs services valued in excess of \$250,000 and purchases at its Brooklyn facilities goods valued in excess of \$5,000 directly from points outside of the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of Sections 2(6) and (7) the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that Intervenor is a labor organization within the meaning of Section 2(5) of the Act.

The Intervenor contends that Petitioner is not a labor organization. For the reasons set forth below, I conclude otherwise.

The Petitioner and Intervenor in this case held those same roles in two recent representation cases in Region 2, *CBT Paratransit, Inc.*, Case No. 02-RC-254888, and *Mar-Can Transportation, Inc.*, 02-RC-255441. As the hearing officer did, I take administrative notice of (i) the hearing transcripts and (ii) Decisions and Directions of Election in those cases. See, e.g., *Heartshare Human Services of New York*, 320 NLRB 1 (1995) (Board denied request for review of Regional Director's decision to limit hearing to evidence of changed circumstances since the hearing in an earlier case involved the same employer and petitioner; hearing officer took administrative notice of the transcript and decision in the earlier case); *Macy's Inc.*, 361 NLRB 12, 16–17 at n. 29 (2014) (Board took administrative notice of Decision and Direction of Election in an earlier case), abrogated on other grounds by *PCC Structural*s, 365 NLRB No. 160 (Dec. 15, 2017).

The only witness presented at hearing was Nicholas Lacerenza, who identified himself as the Petitioner's President. Mr. Lacerenza testified that he and Bobby Pigeon are the only officers of Petitioner; that Petitioner had organized employees at CBT Paratransit, had won an election there, and planned to negotiate with that employer regarding terms and conditions of employment of its employees; and that Petitioner is not currently organizing employees at any other facilities.

For the same reasons as set forth in the Regional Director's Decision and Direction of Election in *Mar-Can Transportation, Inc.*, Case No. 02-RC-255441 (Feb. 18, 2020), I conclude that (i) Petitioner is an organization, (ii) Petitioner exists at least in part for the purpose of dealing with employers on their employees' behalf regarding wages, hours, and other terms and conditions of employment, and (iii) employees participate in Petitioner.

Based on the record facts, I find that the Petitioner satisfies the statutory requirements for labor organization status as set forth in Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I find that the following unit is appropriate within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time drivers and attendants employed by the Employer at its facilities at 141 Hinsdale Street, Brooklyn, New York; 148 Snediker Avenue, Brooklyn, New York; and 12505 Essex Street, Brooklyn, New York.

EXCLUDED: All managers, professional employees, dispatchers, yard persons, fuelers, shop employees, guards, and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote on whether they wish to be represented for purposes of collective bargaining by Local 854; Local 553, International Brotherhood of Teamsters; or neither labor organization.

A. Election Details

The election will be held on a date to be determined by the Regional Director in the Driver's Room at the Employer's 141 Hinsdale Street Brooklyn, NY facility from 8:30 a.m. to 11:30 a.m. and from 3:30 p.m. to 5:30 p.m.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **Friday, March 13, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **March 23, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must

begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015. When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision (for the Petitioner at bcm@bcmassociates.org, and for the Intervenor at dtreiman@friedmananspach.com). The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election, to be issued under separate cover, in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting, and likewise shall be estopped from objecting to the non-distribution of notices if it is responsible for the non-distribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and

Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: March 19, 2020



Kathy Drew-King
Regional Director
National Labor Relations Board
Region 29
Two Metro-Tech Center
100 Myrtle Avenue, Suite 5100
Brooklyn, NY 11201

””